IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 186 of 2007
In
SPECIAL CIVIL APPLICATION No. 14426 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT THRO. THE SECRETARY & 2 - Appellant(s)
Versus
AGRICULTURAL PRODUCE MARKET COMMITTEE, BHAVNAGAR & 12 - Respondent(s)

==========

Appearance :
MR MIHIR JOSHI, Addl. Advocate General, with Ms. KREENA CALLA, AGP, for Appellant(s) : 1 - 3.
MR BM MANGUKIYA for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3 - 13.

==========

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 06/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the interim order dated 7th August, 2006 passed in Special Civil Application No. 14426 of 2006, this Letters Patent Appeal has been filed by the appellants-original respondents nos. 1 to 3.

2. The facts giving rise to the present appeal, in a nutshell, are as under:

2.1 Respondent No. 1-original petitioner is the Agricultural Produce Market Committee, Bhavnagar, (hereinafter referred to as “the Market Committee”), which had been ordered to be superseded by appellant No. 1 by an order dated 18th July, 2006, and by virtue of the said order of supersession under the provisions of sec. 46(1) of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act'), the Dy. Director and District Registrar, Co-operative Societies, Bhavnagar, has been appointed as Administrator of the said society under sec. 46(2) of the Act.

2.2 Being aggrieved by the said order dated 18th July, 2006, the Market Committee had filed the aforesaid petition. After hearing the concerned advocates, the learned Single Judge, by the impugned interim order dated 7.8.2006, has admitted the petition and stayed implementation of the order, whereby the Market Committee has been superseded and

the Administrator has been restrained from functioning as such. The elected body of the Market Committee has been restored to power so as to look after the day-to-day administration of the Market Committee and the Market Committee has been permitted to incur expenses for running the routine day to day administration. The Market Committee has been however restrained from taking any policy decision with regard to purchase or sale of any immovable property and for incurring expenses exceeding Rs. 10,000/- (other than for routine administration) without prior approval of the District Registrar.

3. Learned Addl. Advocate General Shri Mihir Joshi appearing for the appellants has challenged the validity of the aforesaid interim order passed by the learned Single Judge by submitting that by virtue of the impugned order, though interim in nature, the petition has been practically allowed. According to him, it was not open to the learned Single Judge to pass an interim order, which would have the effect of allowing the petition.

4. It has been submitted by him that because of irregularities committed by the Market Committee, show-cause notice dated 7.4.2006 had been issued to it. Instead of giving reply to the show-cause notice, Special Civil Application No. 11605/2006 had been filed in this Court challenging the validity of the said show-cause notice. Ultimately, the said petition had been withdrawn on 15.6.2006 so as to enable the Market Committee to give reply.

5. One more petition, namely, Special Civil Application No. 11447 of 2006, was also filed after issuance of show-cause notice ventilating a grievance that certain documents, which had been demanded by the Market Committee, had not been supplied. The said petition was also disposed of as infructuous when the learned AGP appearing for the State had assured the Market Committee that the documents demanded by the Market Committee would be supplied to it.

6. It has been thereafter submitted that all documents, which had been demanded by the Committee, had been duly supplied to the learned advocate appearing for the Market Committee and thereafter interim reply to the show-cause notice had been given by the Market Committee. After hearing the representative of the Market Committee, ultimately, an order superseding the Market Committee was passed on 18th July, 2006 under sec. 46 of the Act.

7. The learned Addl. Advocate General appearing for the appellant-State has submitted that the learned Single Judge ought not to have passed an interim order, which is in the nature of giving final relief to the Market Committee-original petitioner. It has been submitted that all the documents, which had been demanded by the Market Committee, had been duly supplied to it and, therefore, no prejudice had been caused to the Market Committee. It has been further submitted that the action taken by the State against the Market Committee with regard to its supersession is just and proper and there was no hot haste in

passing the said order as it had been passed only after hearing a representative of the Market Committee. The learned Addl Advocate General has also pointed out from the order of supersession that there were just and proper reasons for superseding the Market Committee.

8. Thus, it has been submitted that the Impugned interim order ought not to have been passed by the learned Single Judge, whereby practically the petition has been allowed at an admission stage. It has been submitted that the impugned order is bad in law and, therefore, it deserves to be quashed and set aside.

9. On the other hand, learned advocate Shri Mangukiya appearing for the Market Committee-original petitioner has submitted that the impugend interim order is just, legal and proper. It has been submitted that the learned Single Judge had called for the relevant record and only upon perusal of the record and upon being satisfied that the order of supersession was not just and proper, the impugned interim order has been passed. It has been submitted by him that even on merits, the order of supersession under the provisions of sec. 46 of the Act was not warranted because, the defaults which have been referred to in the order of supersession had been committed by an earlier body of the Market Committee and, therefore, action should not have been taken against the existing body of the Market Committee. It has been submitted by him that though there was no case for invoking provisions of Section 46 of the

Act, only with an oblique motive of superseding the Market Committee, the provisions of sec. 46(1) of the Act had been invoked. According to the learned advocate, the order of supersession has been passed with a mala fide intention and at the instance of politicians. He has, therefore, submitted that the impugned order of the learned Single Judge should not be disturbed.

10. It has been further submitted by him that no affidavit-in-reply had been filed by the appellant-State before the learned Single Judge though sufficient time was granted. It has been further added that no affidavit-in-reply has been filed by the State even after the impugned order was passed and he was ready to go on with the final hearing of the main petition so that validity of the order of supersession can be finally examined by the learned Single Judge.

11. We have heard the learned advocates at length and as no affidavit-in-reply had been filed by the State before the learned Single Judge, we had also called for the record pertaining to the case.

12. It is pertinent to note that no affidavit-in-reply was filed by the State though time was granted by the learned Single Judge. Special Civil Application No. 14426/06 was notified for admission on 21-7-2006 and notice was made returnable on 25.7.2006. While issuing notice the learned Single Judge had specifically observed in the order issuing notice that a responsible officer, well-conversant

with the facts of the case, should remain present on 25th July, 2007. The matter was adjourned for some time and ultimately it was effectively heard on 7th August, 2006, when the impugned interim order was passed. Though the mater was adjourned twice before the aforesaid impugned interim order was passed, no affidavit-in-reply had been filed by the appellant-State. In the circumstances, upon perusal of the record, the learned Single Judge had passed the impugned order. Prima facie, the learned Single Judge, upon perusal of the record, had found that the order of supersession was not just and proper for the reasons stated in the interim order.

13. It is pertinent to note that the impugned order is an interim order, which had been passed by the learned Single Judge as no affidavit-in-reply had been filed by the appellant-State though allegations with regard to mala fides have been levelled against the appellant-State. We would not like to go into the said allegations as the main petition has yet not been decided. It is pertinent to note that the impugned interim order was passed by the learned Single Judge on 7th August, 2006. The present appeal was notified for hearing in the month of March, 2007. Thereafter, the appeal was not heard for some time and ultimately the appeal has been effectively heard today, i.e., on 6th September, 2007.

14. Though we have perused the order of supersession and the relevant record, we restrain ourselves from expressing any opinion in view of the fact that Special Civil Application No. 14426 of 2006, wherein

the impugned interim order has been passed, has not been finally decided. Even after passing of the impugned order for considerably long period this appeal was not circulated for its effective hearing. Moreover, by virtue of the impugned interim order, though implementation of the order of supersession has been stayed, the elected body of the Committee has been permitted to look after day-to-day administration of the Market Committee and incur expenses only for the purpose of managing day to day administration but the Market Committee has been restrained from taking any policy decision. It is also pertinent to note that expenses exceeding Rs. 10,000/-, without prior approval of the District Registrar, cannot be incurred by the Committee.

15. Looking to the aforesaid interim order, in our opinion, no harm of whatever type would be caused to the State at this juncture as the elected body has been entrusted only the work which would have been performed by the Administrator.

16. It is true that by virtue of the impugned order, the learned Single Judge has put the Market Committee in power again, though the Committee has been superseded by the State of Gujarat by an order dated 18.7.2006. It is equally important to note that if at this juncture the impugned interim order is stayed by this court, this appeal would also stand allowed at an interim stage. Looking to the peculiar facts of the case, and looking to the interim order passed by the learned Single Judge in the Special Civil Application, in our opinion, it would be just and

proper to direct the appellant-State to file its affidavit-in-reply, which has not been filed so far, at an early date so that the petition can be finally disposed of and validity of the order of supersession can be determined by the learned Single Judge.

17. Looking to the facts of the case, in our opinion, it would be just and proper if the main petition is ordered to be fixed for final hearing as soon as possible. Learned advocate Shri Mangukiya appearing for the Market Committee has fairly submitted that he is ready and willing to go on with the final hearing, if the main petition is ordered to be heard at an early date. In view of the willingness of the learned advocate appearing for the Market Committee, we direct the appellant-State to file an affidavit-in-reply in Special Civil Application No. 14426 of 2006 within two weeks from today, and if any rejoinder is required to be filed by the Market Committee, the same shall filed within 2 weeks from the date of receipt of the affidavit-in-reply by the Market Committee or its learned advocate.

18. We direct that Special Civil Application No. 14426/06 shall be notified for final hearing on 8th October, 2007. We record the fact that learned advocate Shri Mangukiya has assured this court that he would not pray for time before the learned Single Judge and would be ready to go on with the matter on that day.

19. Subject to the aforesaid direction with regard

to filing reply and hearing of the petition, we dismiss the appeal with no order as to costs.

(Anil R. Dave, J.)

(H.B. Antani, J.)

(hn)